

BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
PETITION OF INWOOD HOUSE DEVELOPMENT
CORP. AND OMNIPOINT COMMUNICATIONS
CAP OPERATIONS, LLC, A SUBSIDIARY OF
T-MOBILE, USA,

Petitioners

Greg Tully
Steven Willingham
For the Petitioners

Tom Carroll, Esquire
Attorney for the Petitioners

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Board of Appeals Case No. S-2652
(OZAH Referral No. 06-5)

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

TABLE OF CONTENTS

	Page No.
I. STATEMENT OF THE CASE	3
II. BACKGROUND 4	
A. The Subject Property and Neighborhood	4
B. Master Plan	4
C. Proposed Use	5
D. Need for Proposed Facility	11
E. Visual Impact	12
F. Development Standards	14
G. Transportation and Environment	15
III. SUMMARY OF HEARING	15
IV. CONCLUSIONS	17
A. Standard for Evaluation	18
B. Specific Standards	19
C. General Standards	26
V. RECOMMENDATIONS	30

I. STATEMENT OF THE CASE

Petition S-2652, filed June 14, 2005, requests a special exception under the R-60 Zone for a telecommunication facility, to be installed on the roof of an existing multi-family residential building located at 10921 Inwood Avenue in Kensington, known as Block 9, Subdivision 105, Tax Account No. 13-01869694. The petition was filed jointly by Omnipoint Communications CAP Operations, LLC, a subsidiary of cellular telephone service provider T-Mobile, USA ("T-Mobile"), which proposes to construct and operate the telecommunication facility, and the Inwood House Development Corporation, owner of the subject property. The subject property is the site of a multi-family housing facility for handicapped adults that operates pursuant to Special Exception S-567, granted in 1977. Petitioners have submitted a request to the Board of Appeals ("Board") for administrative modification of Special Exception S-567 to acknowledge the special exception requested in this case. See Ex. 17. They have requested that the Board consider the instant petition for a new special exception and the request for administrative modification of Special Exception S-567 at the same work session.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated November 2, 2005, recommended *approval* with conditions.¹ See Ex. 14. Staff submitted a supplemental report, responding to questions posed by the Hearing Examiner, on November 29, 2005. See Ex. 28. The Montgomery County Planning Board ("Planning Board") considered this petition on November 10, 2005 and voted 5 to 0 to recommend *approval*. See Ex. 26.

On July 7, 2005 the Board scheduled a public hearing in this matter for November 11, 2005, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. The hearing was later postponed to November 15, 2005 to avoid the November 11 Veterans' Day holiday. A public hearing was convened after proper notice on November 15, 2005, at which testimony and other evidence were received in support of the proposed special exception. No testimony was offered in opposition to the petition, and the record reflects no community participation. The record was

¹ The Staff Report and supplemental report have been liberally paraphrased and cited in Part II of this report.

held open briefly to receive the Planning Board's recommendation, which was not available prior to the hearing, as well as supplemental submissions from Technical Staff and Petitioners, and closed on December 12, 2005.

II. BACKGROUND

For the convenience of the reader, background information is grouped by subject matter.

A. The Subject Property and Neighborhood

The subject property consists of approximately 3.7 acres of land located at 10921 Inwood Avenue in Kensington, in the southeast corner of the intersection of Inwood Avenue and University Boulevard, one half mile east of the Wheaton Central Business District. The property contains a T-shaped, multi-family residential building with 150 apartments for handicapped adults, and about 60 parking spaces. The site slopes down from both of the abutting public streets. Perimeter landscaping has been installed, as well as a landscaped area in front of the building at the corner of Inwood Avenue and University Boulevard.

The subject property abuts University Boulevard to the north, Inwood Avenue to the west, single-family homes in the R-60 Zone to the south, and townhouses in the RT-12.5 and RT-10 Zones to the east. The Glen Haven Elementary School is located diagonally across Inwood Avenue to the southwest. Sligo Creek Park is located to the northeast and east. The general location of the subject property and its relationship to surrounding land uses may be seen on the vicinity map on the next page.

B. Master Plan

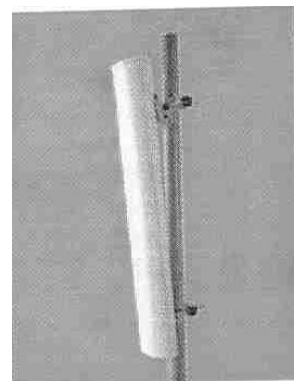
The subject property is in the area covered by the *Kensington Wheaton Master Plan, Approved and Adopted May 1989 and Amended April 1990* (the "Master Plan"). Technical Staff reports that the Master Plan recommends the existing R-60 zoning, which permits the proposed use by special exception, and that the plan contains no specific policies that would recommend against the proposed use. See Ex. 14 at 4,13.

Neighborhood Map, Excerpted from Staff Report, Ex. 14



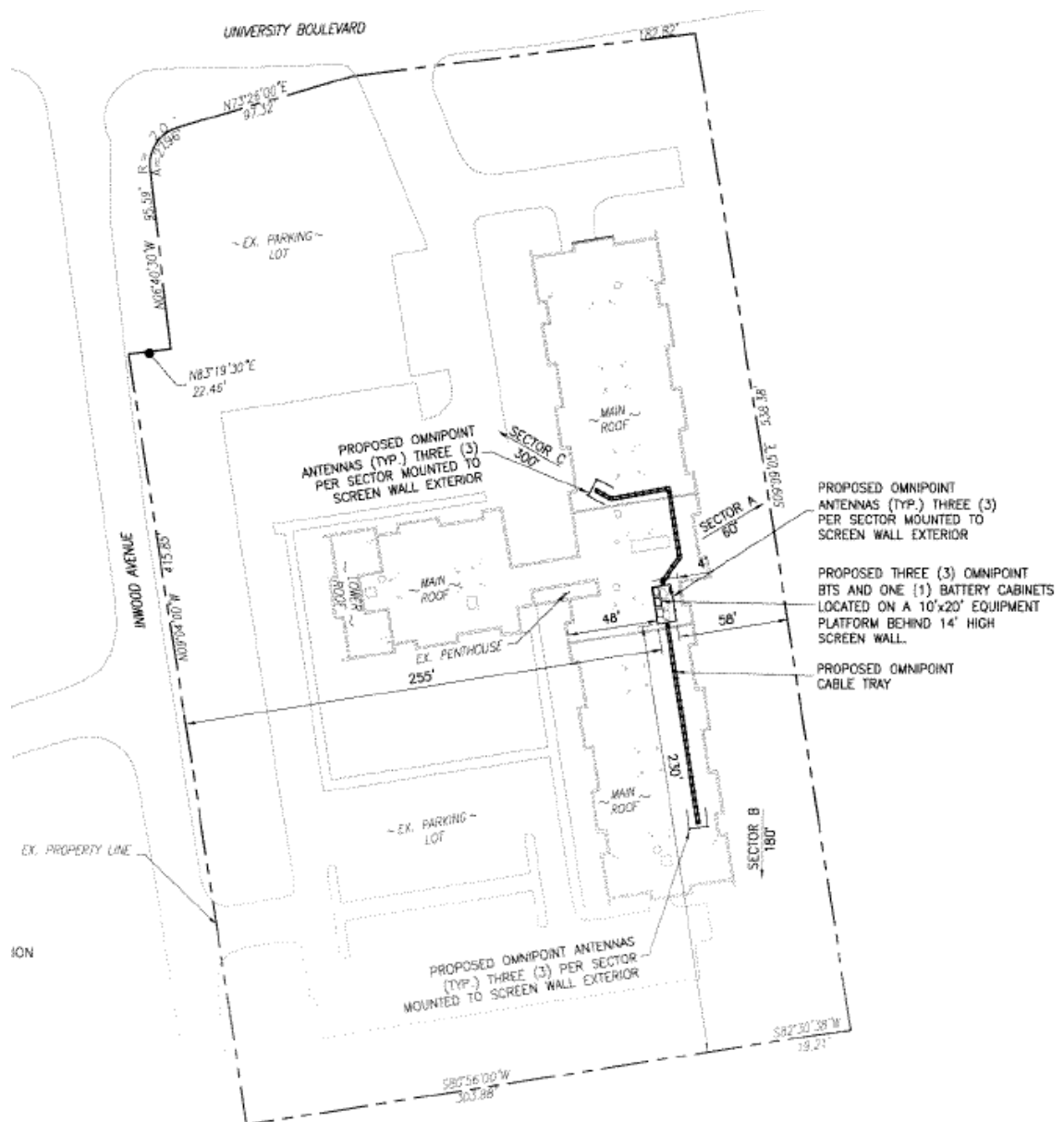
C. Proposed Use

T-Mobile seeks to install a wireless telecom-munication facility on the roof of the Inwood House building. The facility would consist of nine panel antennas, each measuring 54" x 12" x 4", arranged on the roof in groups of three. A photograph of the proposed panel antenna is provided to the right. Each group of three antennas would be mounted on a 14-foot-high screening wall designed to match the existing building façade and an existing elevator penthouse (the elevator penthouse is a typical rooftop structure for a multi-family building, which houses the motor and drive wheel for the elevator). The antennas would be painted to match the screening walls. As shown on the site plan on the next page, one group of antennas would be installed at the south end of the building, one just south of the middle of the "T," and the third just north of the



middle of the "T." The three groups of antennas would be connected to the central equipment cabinets by a coaxial cable tray running along the rooftop. The antennas at the north and south ends of the facility would be mounted on three-sided screening walls, ten feet wide on each side. The middle group of antennas would be mounted on a screening wall with a height of 14 feet, but whose linear dimensions are not specified on the site plan. This middle screening wall is intended to block from view a 10-foot by 20-foot equipment platform inside it. The equipment platform would house three equipment cabinets, each measuring about 3' x 4' x 5'.

Site Plan, Ex. 29(a), graphics only
(See pages 7 and 8 for notes and development standards tables)



Site Plan Notes and Development Standards Tables, from Ex. 29(a) (continues on page 8)

NOTES

1. EXISTING STRUCTURE, BOUNDARY, TRUE NORTH AND TOPOGRAPHIC INFORMATION WERE TAKEN FROM PLANS PREPARED BY DAVID H. DUNLAP ASSOCIATES, INC. DATED APRIL 14 1978 AND LIMITED FIELD OBSERVATIONS BY DEWBERRY & DAVIS LLC ON MAY 4, 2004.
2. THIS PROPOSAL IS FOR AN UNMANNED TELECOMMUNICATIONS FACILITY CONSISTING OF THE PLACEMENT OF THREE (3) BTS CABINETS AND ONE (1) BATTERY CABINET ON A 10'x20' OMNIPPOINT EQUIPMENT PLATFORM ON AN EXISTING BUILDING ROOFTOP AND THE MOUNTING OF NINE (9) PANEL ANTENNAS TO NEW TWO (2) AREAS OF 14' HIGH SCREEN WALL. ALL PROPOSED ANTENNAS AND SCREEN WALL WILL BE PAINTED TO MATCH BACKGROUND OF EXISTING BUILDING.
3. THE PROPOSED FACILITY WILL BE UNMANNED AND DOES NOT REQUIRE POTABLE WATER OR SEWER SERVICE.
4. THE PROPOSED FACILITY IS UNMANNED AND IS NOT FOR HUMAN HABITATION. (NO HANDICAP ACCESS IS REQUIRED).
5. NO NOISE, SMOKE, DUST OR ODOR WILL RESULT FROM THIS PROPOSAL.
6. OUTDOOR STORAGE AND SOLID WASTE CONTAINERS ARE NOT PROPOSED.
7. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL PERMITS AND INSPECTIONS REQUIRED FOR CONSTRUCTION. CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING ANY DAMAGE CAUSED BY THE CONSTRUCTION OPERATION.
8. CONTRACTOR SHALL REMOVE ALL TRASH AND DEBRIS FROM THE SITE ON A DAILY BASIS.
9. THE ORDERING AND PLACING OF SIGNS FALLS UNDER RESPONSIBILITY OF THE GENERAL CONTRACTOR.
10. INFORMATION SHOWN ON THESE DRAWINGS WAS OBTAINED FROM SITE VISITS. CONTRACTOR SHALL NOTIFY OMNIPPOINT OF DISCREPANCIES PRIOR TO ORDERING MATERIAL OR PROCEEDING WITH CONSTRUCTION.
11. CONTRACTOR SHALL CALL MISS UTILITY FOR UNDERGROUND UTILITY MARKOUT PRIOR TO CONSTRUCTION. 1-800-257-7777
12. NO TREES ARE TO BE REMOVED.
13. THESE PLANS ARE NOT INTENDED TO BE A BOUNDARY SURVEY.
14. THE PROPOSED FACILITY IS NOT IN A FLOOD PLAIN.
15. TOTAL DISTURBED AREA = 0 S.F.
16. THIS DOCUMENT WAS DEVELOPED TO REFLECT A SPECIFIC SITE AND ITS SITE CONDITIONS AND IS NOT TO BE USED FOR ANOTHER SITE OR WHEN OTHER CONDITIONS PERTAIN. REUSE OF THIS DOCUMENT IS AT THE SOLE RISK OF THE USER.
17. THE PURPOSE OF THESE DRAWINGS IS TO OBTAIN ZONING APPROVALS ONLY.

BULK REQUIREMENTS

PER SECTION 59--A--6.14: (ANTENNA FOR PRIVATE TELECOMMUNICATION FACILITY MOUNTED ON ROOF TOP OR STRUCTURE LOCATED ON PRIVATELY OWNED LAND)

	ZONING ORDINANCE DEVELOPMENT STANDARD	DEVELOPMENT STANDARD PROPOSED FOR APPROVAL, TO BE BINDING ON THE APPLICANT	
		EXISTING	
MAX TOTAL GROSS ROOF AREA OF UNMANNED EQUIPMENT STRUCTURE	25% (OF ROOF AREA)	2%	1 %
MAX UNMANNED EQUIPMENT STRUCTURE HEIGHT	12 FT	N/A	5.8'
MAX HEIGHT FOR A DIRECTIONAL ANTENNA	15'	N/A	14 FT
MAX WIDTH FOR A DIRECTIONAL ANTENNA	NOT REGULATED	N/A	12 IN

BULK REQUIREMENTS			
PER SECTION 59-C-1.53 R60 (RESIDENTIAL)			
	ZONING ORDINANCE DEVELOPMENT STANDARD	EXISTING	DEVELOPMENT STANDARD PROPOSED FOR APPROVAL, TO BE BINDING ON THE APPLICANT
MIN LOT AREA	4,000 S.F.	3.92 AC.	NO CHANGE
MIN LOT WIDTH	25 FT.	323± FT.	NO CHANGE
MINIMUM YARDS			
FRONT	30' (STREET LINE)	195'±	225'±
SIDE	10'	103'±	138'±
REAR	30'	36'±	66'±
MAX LOT COVERAGE	NONE	N/A	N/A

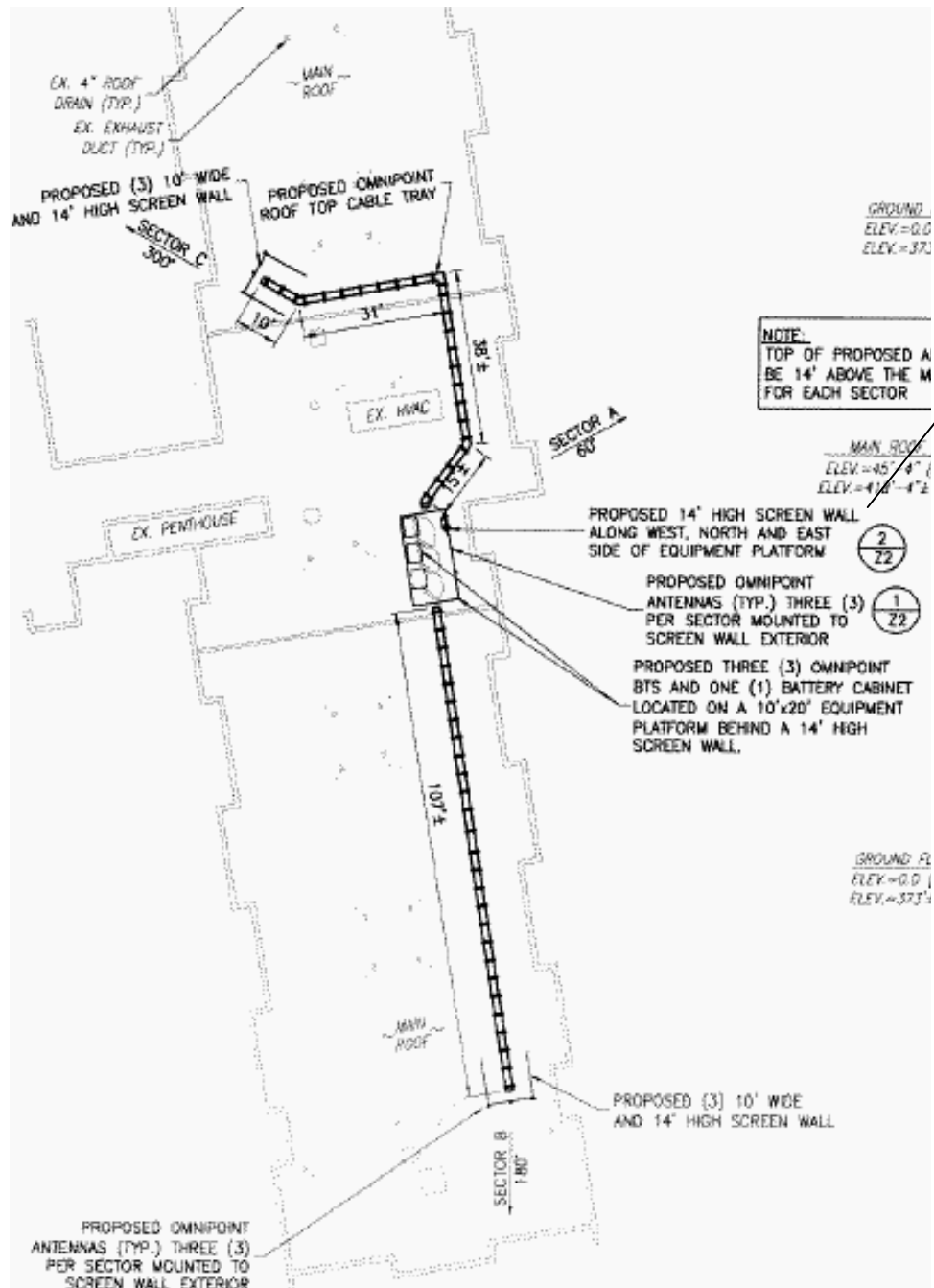
The aerial photograph below identifies the rooftop locations proposed for the three groups of antennas.



The Hearing Examiner discovered an inconsistency between the submitted site plan and the testimony offered by Petitioner's site acquisition and zoning manager, Greg Tully. Mr. Tully testified that the middle group of antennas would be mounted on a screening wall "that surrounds" the equipment platform. Tr. at 17. He further stated that the equipment platform would be "completely hidden from view" behind a screening wall. Tr. at 18. The Hearing Examiner notes, however, on the portion of the "Detailed Site Plan Elevation View" depicted on the next page, that a screening wall is specified only for the west, north and east sides of the equipment platform. This would leave the

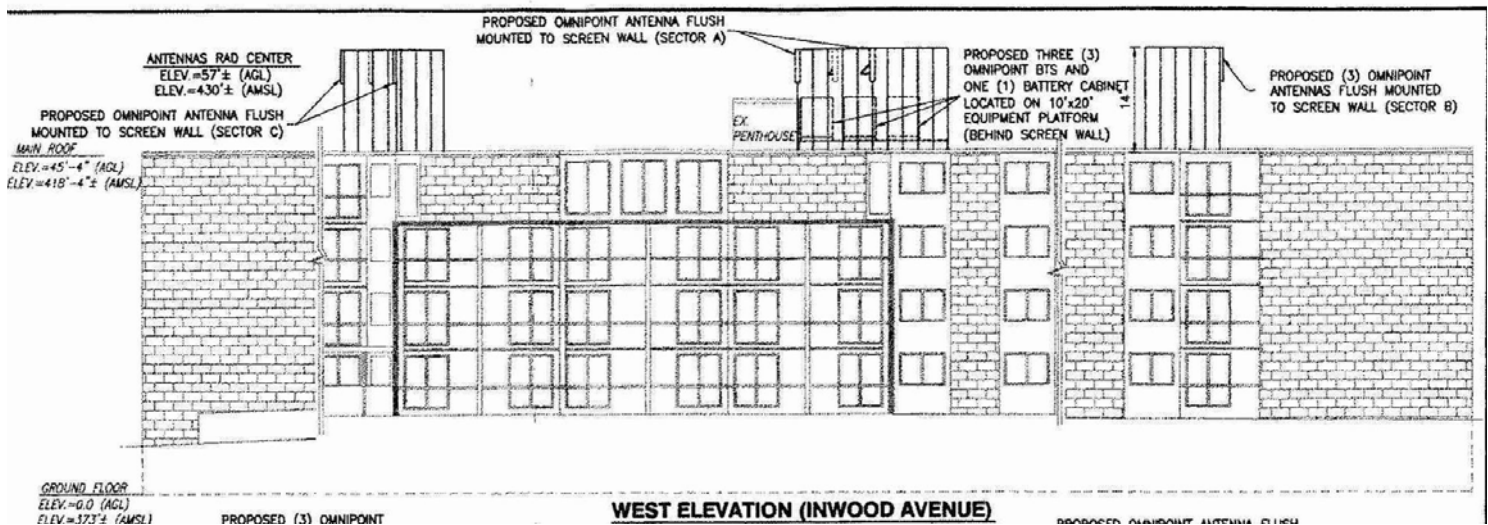
equipment platform unscreened from the south, where the property abuts single-family homes. The conditions of approval proposed in this report require submission of a revised Site Plan and a revised Detailed Site Plan Elevation View, before the special exception takes effect, specifying that the equipment platform will be surrounded by a 14-foot screening wall on all four sides, and providing linear dimensions for each side of the wall.

**Detailed Site Plan and Elevation, Ex. 29(b), Graphics of Rooftop Only
(See next page for building elevation)**



Screen wall for equipment platform limited to west, north and east sides.

The anticipated building elevation, as seen from Inwood Avenue, is shown below.



Technical Staff notes that T-Mobile's submission to the County's Telecommunication Transmission Facility Coordinating Group (the "Tower Committee") depicts the antennas mounted on a steel "sled" or stand. See Ex. 14 at 3. The Tower Committee nonetheless recommended approval of the present petition. See Ex. 9. As recommended by Technical Staff, the proposed conditions of approval require Petitioners to implement the screening plans presented in this petition. With the screening walls and antennas designed to match the existing elevator penthouse on the roof, Technical Staff concludes that although the changes to the building would be visible, they would have no negative visual impacts. See *id.*

The proposed facility would operate 24 hours a day, seven days a week. It would be unmanned, with service visits once or twice a month. Technical Staff observed that the parking lots were not full during various site visits conducted during the work day, when the service visits would take place. Given the minimal parking needs for the use, Staff recommends no new parking. Mr. Tully testified that there would be no objectionable odors, fumes, dust, noise or vibrations. No exterior lighting is proposed, and the only signage proposed is a warning sign on the roof, which is required under the Zoning Ordinance and federal regulation.

D. Need for Proposed Facility

T-Mobile represents that the proposed facility is needed to provide seamless coverage for customers using its Personal Communication Services ("PCS") network. Petitioner states that seamless coverage is necessary for the public convenience and service, and benefits the public safety and welfare by facilitating communication with police, fire and rescue services during emergencies. T-Mobile's objectives in proposing this new facility are to fill in coverage gaps and to provide additional capacity for a large and increasing number of customers.

T-Mobile offered documentary evidence as well as testimony from an expert in radio frequency engineering, Steven Willingham, to demonstrate the need for the rooftop wireless facility proposed here. Mr. Willingham presented two radio frequency propagation maps, one showing the level of service that T-Mobile provides in the area of the subject property currently, and the other showing the level of service expected with the addition of the proposed facility. See Exs. 21(a) and (b).

The current service map shows that in the immediate vicinity of the subject property there is a gap in coverage, where no reliable service is provided. It also shows a wider area in close proximity to the subject property where coverage is reliable for customers in vehicles, but not for customers in homes or commercial buildings. (Mr. Willingham explained that a stronger signal is required to provide wireless telephone service in buildings than in cars, and that due to their construction and materials, commercial buildings require a stronger signal than residential ones.) The "future service" map shows that the proposed facility would eliminate most of the coverage gap in the vicinity of the University Boulevard/Inwood Avenue intersection, and would provide reliable coverage in that vicinity for customers in residential and commercial buildings, as well as vehicles.²

Mr. Willingham also presented data showing the number of calls that were dropped in mid-call from four T-Mobile sites in the area of the subject property, during the seven days preceding the hearing. See Ex. 23. The data shows that during this period, there were an average of 156

² The coverage maps are not reproduced in this report because they were provided in color, and did not translate well to black and white.

dropped calls per day at the nearby facility with the highest call volume, 92 dropped calls per day at another nearby facility, and between 30 and 40 dropped calls per day at two other nearby facilities. Mr.

Willingham described these figures as a significant number of dropped calls, particularly at the location averaging 156 dropped calls per day. He explained that calls get dropped for several reasons. Tr. at 41-42. Coverage for an in-building call might be blocked or reduced if there are larger buildings between the nearest wireless facility and the customer's location, a call placed from a car might be dropped as the driver passes through the portion of University Boulevard nearest the subject property, or calls might be blocked by terrain, trees or other interference.

The Tower Committee Recommendation supports Sprint's evidence concerning the need for the facility. The Tower Committee recommended approval of the proposed facility at the subject property, finding that the RF signal contour maps show "a section of coverage in the vicinity of this site where the signal strength is lower than the adjacent areas and that the new antennas at the site improve coverage and add capacity to handle more calls in this area as well." See final attachment to Staff Report.

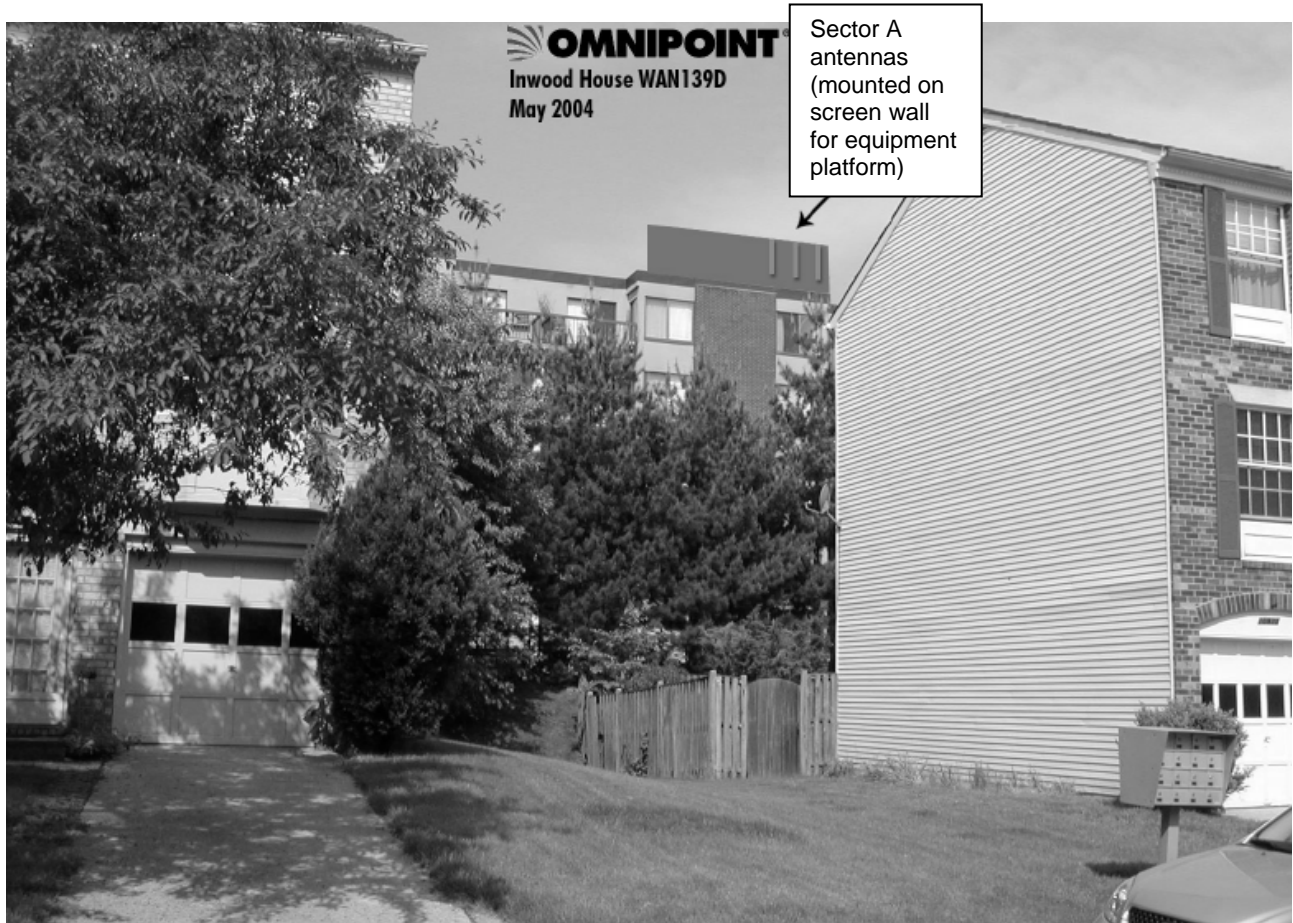
E. Visual Impact

The proposed wireless facility would be visible, but not obvious. Technical Staff opined that because the installation would look like a wall or rooftop enclosure that is not uncommon for buildings with elevators, the facility would look appropriate for the building, and consistent with its multi-family residential appearance. Photographic simulations of how the proposed installation would appear are provided on the next two pages.

Photographic Simulation of Proposed Rooftop Facility Seen from North, Ex. 19(c)

Photographic Simulation of Proposed Rooftop Facility Seen from South, Ex. 19(b)

Sector B
antennas
(south end
of building)

Photographic Simulation of Proposed Rooftop Facility Seen from East, Ex. 19(a)***F. Development Standards***

As shown in the table on the next page, adapted from the Staff Report, the existing building complies with all applicable development standards. The proposed facility would not cause the building to violate any applicable standards, because it would have no effect on any of the relevant elements – setbacks, lot area, building coverage, parking or building height. Although the installation would be located on the roof, Technical Staff reports that it would not be included in measuring the building height because it would not be part of the “roof surface” from which height is measured. See supplemental Staff Report, Ex. 28.

Development Standards

Development Standard	Requirement	Proposal
Minimum front yard setback	25 ft.	Approx. 95 ft.
Minimum side yard setback	8 ft. (sum 18 ft.)	Approx. 28 ft./sum 87 ft.
Minimum rear yard setback	20 ft.	Approx. 80 ft.
Minimum lot area	6,000 sq. ft.	3.9 acres
Maximum building height	35 ft.	30 ft. 6 in.
Maximum building coverage	35 %	35%
Parking requirement	38 spaces	60 spaces

G. Transportation and Environment

Transportation Planning Staff at MNCCP recommended approval of the present petition based on the negligible traffic impact of two monthly service calls, and opined that nearby intersections would continue to operate at an acceptable level of service with the proposed facility in place.

The present petition is exempt from forest conservation requirements because it proposes modification of an existing building, with no new land disturbance. Technical Staff notes that the proposal raises no environmental issues.

III. SUMMARY OF HEARING

1. Greg Tully, T-Mobile site acquisition and zoning manager.

Mr. Tully was designated an expert in the siting of commercial wireless telecommunication facilities based on seven years' experience in the field. Mr. Tully described the proposed facility and neighboring properties. He stated that the proposed facility would help alleviate road congestion and expedite the provision of police and fire protection, disaster evacuation and accident assistance, improve wireless communications and "from a broader perspective will advance health and safety interests in the County." Tr. at 17. Mr. Tully stated that the present proposal is consistent with the general purpose and intent of Montgomery County's telecommunications siting regulations, which encourage the use of existing structures rather than the proliferation of new, freestanding towers.

Referring to photographic simulations of the appearance the proposed facility would have on the rooftop, Mr. Tully stated that the screening walls and antennas would be painted to blend as much as possible with the existing architectural pattern of the building, to mitigate any adverse visual impact. Speaking as an educated lay person with a background in land planning, Mr. Tully observed that the intent is for the proposed facility to resemble structures commonly found on rooftops, such as a small penthouse or a chimney. He suggested that the average passerby would not immediately be aware that there was a wireless installation on the roof. Tr. at 21-22.

Mr. Tully noted that the proposed facility would have no impact on the existing parking, landscaping, or other features of the subject property. No signage or illumination is proposed, other than a warning sign on the roof. He described the proposed use as low-intensity, requiring on-site personnel only for maintenance visits once or twice a month. The telecommunication equipment itself would operate 24 hours per day, except in the event of a power outage. He noted that the proposed use would not create any noise, vibrations, fumes, odors, illumination, glare, or other physical activity that could be considered objectionable to neighbors. Tr. at 24-25. Mr. Tully added that the current supply of electric and land-line telephone service to the subject property would be sufficient to accommodate the proposed facility. The facility would access the power and telephone service currently available to the Inwood House building via a utility board within the equipment compound. Tr. at 30.

Addressing the need for the proposed facility, Mr. Tully stated that T-Mobile's wireless network currently experiences a coverage gap in the area of the subject property, and needs a new site to meet service requirements.

Mr. Tully noted that the rooftop of the Inwood House building is secure, meaning that residents do not have access to it. He stated that as a result, the proposed facility would not pose a threat to the health or safety of the residents.

2. Steven Willingham, radio frequency engineer

Mr. Willingham, a senior RF engineer for T-Mobile with 11 years' experience in the field, was designated an expert in radio frequency engineering. He described his job as designing and optimizing wireless sites so that they perform properly and provide reliable coverage to customers.

Referring to RF coverage maps in the record, Exhibits 21(a) and (b), Mr. Willingham explained that the two maps depict the level of coverage in T-Mobile's network in the vicinity of the subject site, one without the proposed facility and one as projected with the proposed facility. The maps use three colors, which Mr. Willingham explained show reliable coverage for in-vehicle use, for use inside residential buildings, and for use inside commercial buildings. Tr. at 34-35. He observed that the maps show unreliable in-vehicle coverage along University Boulevard in the vicinity of the subject site, and no in-building coverage.

Mr. Willingham stated that the RF coverage maps confirm indications of network coverage problems experienced by customers. He reviewed records of dropped calls, concluding that the number is significant and indicates a coverage problem.

Mr. Willingham stated that T-Mobile's objectives in proposing this new facility are to fill in the coverage gaps, and also to provide additional capacity for a large and increasing number of customers.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a telecommunication facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Physical and operational characteristics associated with a telecommunication facility include the placement of antennas on a structure or building of a significant height, installation of an enclosed equipment shelter, a limited number of service visits by employees, and the propagation and receipt of radio waves to and from the antennas. Technical Staff notes that non-inherent characteristics of such a facility may include the size, height, and visibility of the installation. Staff Report at 6. In this case, all facilities would be mounted on the roof of an existing building, and their visibility would be mitigated by parapet walls designed to have the appearance of typical rooftop structures for a multi-

family residential building. These facilities would be consistent with those typically associated with a rooftop telecommunication facility. Operational characteristics of the present proposal are consistent with those anticipated at any telecommunication facility. Based on the preponderance of the evidence, the Hearing Examiner agrees with Technical Staff that the present proposal includes no non-inherent adverse effects that warrant denial.

B. Specific Standards

The specific standards for a telecommunication facility are found in §59-G-2.43. The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient evidence that with the recommended conditions of approval, the proposed facility would be consistent with these specific standards, as outlined below.

Sec. 59-G02.43. Public utility building, public utility structure, and telecommunication facility.

- (a) A public utility building or public utility structure, not otherwise permitted, may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts. For other buildings or structures regulated by this section, the Board must make the following findings:
 - (1) The proposed building or structure at the location selected is necessary for public convenience and service.

Conclusion: The undisputed evidence submitted by T-Mobile in the form of radio frequency coverage maps, records of dropped calls and the testimony of its RF Engineer, taken together, provide substantial, probative evidence that the proposed rooftop wireless facility is necessary for the public convenience and service, to fill a coverage gap along University Boulevard in the immediate vicinity of the subject property, improve existing coverage in the vicinity of the subject property and provide additional capacity for an increasing customer base. The Tower Committee, the Planning Board and Technical Staff also found T-Mobile's evidence persuasive and recommended approval of the proposed facility as necessary for the public convenience and service.

- (2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

Conclusion: Petitioners' Statement in Support states that the proposed facility would create no harmful emissions or electrical or blanketing interference. See Ex. 3 at 5. The Statement in Support further represents that a report by an expert in the field was submitted with it, identified as Attachment H, verifying that the proposed facility would comply with emissions standards established by the Federal Communications Commission ("FCC"). See *id.* Such a statement is not, however, part of the existing record. Attachment H to the Statement in Support is a copy of the Tower Committee recommendation, not an expert's report. The recommended conditions of approval require submission of such a report before the special exception can take effect. T-Mobile would be legally required to comply with federal emissions standards, but some evidence is needed that the equipment specified in this application would, in fact, be in compliance.

The evidence indicates that the rooftop of the Inwood House building is secure. As a result, the proposed facility would be inaccessible to residents, and T-Mobile workers would be able to access the facility and work safely without interference. The Hearing Examiner agrees with Technical Staff's conclusion that because of the design of the screening walls and the painting scheme, the proposed installation would not be obvious from neighboring properties, and therefore would cause no substantial impairment or detriment. Moreover, the proposed facility may have a beneficial effect on public safety by providing cellular phone users with improved ability to report accidents, crimes or other emergencies.

- (b) A public utility building allowed in any residential zone, must, whenever practicable, have the exterior appearance of residential buildings and must have suitable landscaping, screen planting and fencing, whenever deemed necessary by the Board.

Conclusion: The Hearing Examiner agrees with Technical Staff's conclusion that the proposed rooftop telecommunication facility would be consistent in appearance with the multi-family residential character of the existing building, and that landscaping is not suitable for this rooftop location, because it would call unnecessary attention to the installation and create a maintenance issue.

- (c) The Board may approve a public utility building and public utility structure exceeding the height limits of the applicable zone if, in the opinion of the

Board, adjacent residential developments and uses will not be adversely affected by the proposed use.

Conclusion: The proposed installation would not cause the existing building to exceed the maximum height permitted in the R-60 Zone, which is 35 feet. Technical Staff reports that the building height, as defined in the Zoning Ordinance, is approximately 30 feet. However, height is measured to the “highest point of roof surface of a flat roof,” and the proposed installation would consist of structures mounted on a roof, not part of the roof surface. See Ex. 28 at 3. Moreover, the evidence strongly supports a conclusion that adjacent residential developments and uses would not be adversely affected due to the unobtrusive nature of the proposed facility.

- (d) Any proposed broadcasting tower shall have a setback of one foot from all property lines for every foot of height of the tower; provided, that any broadcasting tower lawfully existing on September 1, 1970, shall be exempt from the setback limitations imposed by this subsection

Conclusion: No broadcasting tower is proposed in this case.

- (e) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad, bus, and trolley, air and boat passengers stations; radio or television transmitter towers and stations; **telecommunication facilities**; above ground pipelines. Additional standards for telecommunication facilities are found in subsection (j). *Emphasis added.*

Conclusion: No finding necessary; the proposed use is a telecommunication facility.

- (f) Reserved
- (g) In addition to the authority granted under Section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety or general welfare.

Conclusion: Recommended conditions are set forth below.

- (h) Petitions for special exception under this section may be filed on project basis.

Not applicable.

- (i) A petitioner under this section is considered an interested person for purposes of filing a request for a special exception if the petitioner states

in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.

Conclusion: Not applicable. The subject property owner is a co-applicant, evidencing an intent to enter into a lease arrangement appropriate for the proposal.

- (j) Any telecommunication facility must satisfy the following standards:
 - (1) A support structure must be set back from the property line as follows:
 - a. In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.
 - b. In commercial and industrial zones, a distance of one-half foot from [the] property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.
 - c. The setback from a property line is measured from the base of the support structure to the perimeter property line.
 - d. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

Conclusion: No support structure is proposed; the proposal is to install the telecommunication facility on the roof of an existing building.

- (2) A support structure must be set back from any off-site dwelling as follows:
 - a. In agricultural and residential zones, a distance of 300 feet.
 - b. In all other zones, one foot for every foot in height.
 - c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

- d. The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

Conclusion: No support structure is proposed; the proposal is to install the telecommunication facility on the roof of an existing building.

- (3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communications purposes. At the completion of construction and before the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location of the support structure.

Conclusion: No support structure is proposed; the proposal is to install the telecommunication facility on the roof of an existing building.

- (4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

Conclusion: No support structure is proposed; the proposal is to install the telecommunication facility on the roof of an existing building. Moreover, the equipment proposed for rooftop installation includes screening and camouflaging paint designed to minimize visual impact.

- (5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunication facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers if: 1) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and 2) the Board decides that construction of a

lower support structure with fewer telecommunication carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunication facility for all the carriers.

Conclusion: No support structure is proposed; the proposal is to install the telecommunication facility on the roof of an existing building. Moreover, the property owner is a co-applicant.

- (6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

Conclusion: No signs or illumination are proposed on the antennas, and no support structure is proposed. The only signage proposed is a warning sign, not to exceed two feet square, to be installed for safety purposes and to comply with FCC regulations. No sign illumination is proposed.

- (7) Every freestanding support structure must be removed at the cost of the owner of the telecommunication facility when the telecommunication facility is no longer in use by any telecommunication carrier for more than 12 months.

Conclusion: No support structure is proposed; the proposal is to install the telecommunication facility on the roof of an existing building. T-Mobile represents that all telecommunication antennas and equipment cabinets will be removed from the existing building rooftop within 12 months of cessation of operations. This is reflected in a proposed condition of approval with slightly broader language, requiring the removal of *all* equipment related to the telecommunication facility, not just the antennas and equipment cabinets.

- (8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.

Conclusion: Although no support structure is proposed, Petitioners intend to provide a sign as specified in this section and as required by FCC regulations. The sign would be no larger than two square feet and would provide contact information. This requirement is recommended as a

condition of approval, together with a requirement, recommended by Technical Staff, to provide the Board with a dated photograph of the sign when it has been installed, and to update the Board if there is a change in ownership. See Staff Report at 11. The warning sign is particularly important in this case, because even a "secure" rooftop is more accessible to non-employees than the free-standing support structures used by many telecommunication facilities.

- (9) Outdoor storage of equipment or other items is prohibited.

Conclusion: No outdoor storage of any kind is proposed.

- (10) Each owner of the telecommunication facility is responsible for maintaining the telecommunication facility, in a safe condition.

Conclusion: Bi-monthly service visits are intended to ensure compliance with this condition. See Ex. 3 at 8.

- (11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Telecommunication Transmission Facility Coordinating Group regarding the telecommunication facility. The recommendation must be no more than one year old.

Conclusion: The Petitioners filed the required recommendation, Exhibit 9, which is dated June 17, 2004, 362 days before the instant petition was filed. Thus, the recommendation was not quite one year old at the time of filing. Given that this requirement is framed in terms of a *filing* requirement, the Hearing Examiner interprets it to require that the recommendation be no more than one year old when it is filed with the application. Petitioners accomplished this with three days to spare.

- (12) Prior to the Board granting any special exception for a telecommunication facility, the proposed facility must be reviewed by the County Telecommunication Transmission Facility Coordinating Group. The Board and Planning Board must make a separate, independent finding as to need and location of the facility.

Conclusion: Both the Tower Committee and the Planning Board have reviewed the proposed facility and recommended approval. The undisputed evidence submitted by T-Mobile during this proceeding, in the form of RF coverage maps, data about dropped calls and the testimony of its RF Engineer, indicates that the proposed facility, at the proposed location, is necessary to fill a coverage

gap and improve coverage in the vicinity of the subject property, as well as to increase capacity for a growing customer base.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: A telecommunication facility is a permitted use in the R-60 Zone.³

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.43, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special

³ Both Petitioners and the original Staff Report state that if the Inwood House building were a few inches taller, the proposed use would be permitted by right. They are correct that in the R-60 Zone, a telecommunication facility is permitted on a rooftop by right if the building in question is at least 50 feet in height. See Tr. at 16; Zoning Ordinance § 59-A-6.14 (the building also must not be a single-family residence). Petitioners represent that the roof of the Inwood House building measures 45 ft., 4 inches at the location of the proposed telecommunication facility, therefore it is only a few feet away from 50 feet. Tr. at 16. The Hearing Examiner, however, finds that this argument rests on a faulty height measurement. As explained by Technical Staff in a Supplemental Report, Ex. 28, the height of the Inwood House building, as defined in the Zoning Ordinance, is the distance from the highest point of roof surface to the approved street grade opposite the middle of the front of the building. See Ex. 28 at 3. That measurement is approximately 30 feet, not 45. See *id.* Staff attributes the difference in height measurements to differences in grade – the grade slopes down from the approved street grade opposite the middle of the front of the building. See *id.* Thus, in the Hearing Examiner's view, the Inwood House building is about 20 feet too short for the proposed use to be permitted by right.

exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports Technical Staff's conclusion that the proposed use would be consistent with the *Kensington Master Plan*.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: The proposed facility would have no effect on population density, no new free-standing structures, a very low intensity and character of activity, and a negligible impact on traffic and parking. The rooftop structures would be visible from neighboring properties, but their design would result in an appearance that is consistent with the multi-family residential character of the building, and therefore not very noticeable. Accordingly, the Hearing Examiner concludes that the proposed use would be in harmony with the general character of the neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, due to its rooftop installation, screening and camouflage painting scheme. Moreover, enhanced ability to use cellular telephones would bring benefits to the neighborhood in terms of convenience and safety.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that due to the very low intensity of activity, the proposed use would cause no objectionable noise, vibrations, fumes, odors, dust or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The general neighborhood of the subject property contains single-family homes, townhouses and multi-family dwelling units (on the subject property). Technical Staff reports that there are no special exceptions on adjoining or confronting properties. Only two special exceptions were identified in the vicinity of the subject property: SE-12, a private educational institution special exception permitting a piano school with no more than five students, and BAS 1878, an accessory apartment that has been revoked. Given this very small number of special exceptions and the very limited activity associated with the proposed rooftop wireless facility, the Hearing Examiner concludes that the proposed use would not increase the number, intensity, or scope of special exception uses in the area sufficiently to affect the area adversely or alter its character.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities with the proposed use. The only utilities the proposed facility would use are electric and telephone service, and its effect on public roads would be negligible.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case,

subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required. The proposed use would generate far fewer than 30 vehicular trips during the weekday peak hours, so it is not subject to Local Area Transportation Review requirements. Policy Area Transportation Review requirements no longer apply, per the current AGP Policy Element.

- (2) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The preponderance of the evidence supports a conclusion that the proposed use would have no discernible effect on the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that Petitioners have met the burden of proof and persuasion.

59-G-1.23 General Development Standards

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F; must incorporate glare and spill light control devices to minimize glare and light trespass; and may not have lighting levels along the side and rear lot lines exceeding 0.1 foot

candles. Furthermore, under Section 59-G-1.23(g), any structure constructed under a special exception in a residential zone “must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.” Under Section 59-G-1.26, a structure constructed pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted, and must have suitable landscaping, streetscaping, pedestrian circulation and screening.

Conclusion: As shown in the table on page 16, the proposed development would satisfy all applicable development standards of the R-60 Zone. The Hearing Examiner agrees with Technical Staff that the parking need associated with the proposed use is so minor, with only four vehicular trips expected per month, that the existing parking on the site is adequate. The proposed development is exempt from forest conservation requirements. No signage is proposed other than a warning sign posted on the facility itself, which would comply with Article 59-F. No lighting is proposed. No new free-standing structures are proposed, and the proposed rooftop installation would have minimal visual impact due to screening and camouflage painting. The proposed telecommunication facility would have negligible impact on the appearance and character of the existing building, and no additional landscaping is warranted.

V. RECOMMENDATIONS

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2652, which requests a special exception under the R-60 Zone for a telecommunication facility, to be installed on the roof of an existing multi-family residential building located at 10921 Inwood Avenue in Kensington, known as Block 9, Subdivision 105, be ***granted*** with the following conditions:

1. Petitioners shall be bound by all of their testimony and exhibits of record, including the final Site Plan and General Notes to be submitted and approved pursuant to

Condition No. 3 below and the final Detailed Site Plan Elevation View to be submitted and approved pursuant to Condition No. 4 below, and by the testimony of their witnesses and representations of counsel identified in this report.

2. All equipment associated with the telecommunication facility must be removed at the cost of the owner of the telecommunication facility when the facility is no longer in use by any telecommunication carrier for more than 12 months.
3. This special exception shall not take effect until the submission and approval by the Board of Appeals of a revised Site Plan and General Notes consisting of Exhibit 29(a), revised to specify that the equipment platform shall be surrounded on all four sides by a 14-foot-high screening wall. The Site Plan must also identify the linear measurements of each of the four walls and specify which wall shall be gated or otherwise configured to permit employee access to the equipment platform.
4. This special exception shall not take effect until the submission and approval by the Board of Appeals of a revised Detailed Site Plan Elevation View consisting of Exhibit 29(b), revised to specify that the equipment platform shall be surrounded on all four sides by a 14-foot-high screening wall. The Site Plan must also identify the linear measurements of each of the four walls and specify which wall shall be gated or otherwise configured to permit employee access to the equipment platform.
5. This special exception shall not take effect until submission and acceptance by the Board of the expert report referred to in Petitioners' Statement in Support, Exhibit 3 at 5, verifying that the proposed facility will comply with applicable emissions standards promulgated by the Federal Communications Commission.
6. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the screening wall outside the equipment platform on the side that provides access into the enclosure. This sign must identify the owner and the maintenance service provider for the facility and provide the telephone

number of a person to contact regarding the structure. A dated photograph of the sign must be provided to the Board of Appeals upon installation. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.

7. Each owner of the telecommunication facility is responsible for maintaining the facility in a safe condition.
8. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes, regulations, directives and other governmental requirements.

Dated: January 10, 2006

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner